



RWA's - NGO's - ACTIVIST's

'SAVE OUR CITY' CAMPAIGN

Delhi's Master Plan by DDA DELHI DERELICT AUTHORITY

Four Part Joint Objections / Suggestions

PART-1 – GENERIC ACROSS DELHI

07/06/2018

To

Commissioner cum Secretary,

Delhi Development Authority,

B-Block, Vikas Sadan,

New Delhi-110023.

e-mail: commrcumsecretary@dda.org.in

Sub: Reference your advertisement in TOI/HT dated 26-05-2018 inviting Suggestions for 'Master Plan Section'. (CC; LSC & CSC) and Non Conforming Areas

PREAMBLE: The Proposed Amendments / Modifications in DDA's Public Notice dated 26-05-2018 are the same as in their previous Public Notice of February 2018.

We expected that after Five Months of SC Hearings and umpteen oral and recorded Observations of the Hon'ble Judges, DDA will factor in the issues that have been flagged therein. DDA has not included even those Points that they had promised in their Affidavit to the Hon'ble Court.

STARTING A BUSINESS OR A BUILDING - There Should be a Single Window Clearance, all documents to be deposited in one place and the file after all approvals be collected from the same window, so that the OFFICE/OFFICER INCHARGE CLEARING/HANDING OVER THE FILE ENSURES THAT ALL CLEARANCES ARE IN PLACE to fix Accountability.

Dear Sir,

Commercialisation of Residential Colony is a SECURITY & ENVIRONMENTAL NIGHTMARE, not to mention its impact on SOCIAL FABRIC. The Monitoring Committee in its wisdom has started sealing the Markets, IGNORING THE REAL MENACE, Commercial Establishments on so called NOTIFIED CITY STREETS, without a Scientific Survey.

Delhi has become a nonstop Urban Jungle in Seismic Zone IV with INTERMINGLING HABITAT & LIVELIHOOD and unplanned Rickety Structures. Everything that Ails Delhi Today is the result of a flawed MPD-2021 Smog, Crime, Parking, Traffic Jams, Untreated Sewage, Water Logging, Encroachments, Overloaded Public Transport & Hospitals, Lack of School & College Seats etc.

Dutifully DDA mentions the MC Mehta vs Union of India {WP(C) No.4677/1985} case, seemingly without reading the Judgment dated 16-02-2006 (henceforth referred to as 'The Judgment'). We reproduce a few extracts for you to decide whether DDA has understood a word of the stated purpose of the said Judgment.

".....Keeping future needs in view, experts prepare Master Plans. Perusal of the Delhi Master Plan, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning, take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses to be built and where the commercial buildings to be located, need of household industries etc. Provision for household industries in residential areas does not mean converting residential houses in the commercial shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can be used for commercial and trading activities and sale and purchase of goods. Master Plan contemplates shops in District Centres, Community Centres, Local Shopping Centres etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of residential premises for commercial use....."

".....Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief, the orders made in the last so many years but it seems, the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens....."

.....MEANING MISUSE OF RESIDENTIAL SPACES will be phased out and prioritise as to which violations will be taken up first. **DDA THROUGH ITS PUBLIC NOTICE IS DOING THE EXACT OPPOSITE OF WHAT SUPREME COURT EXPECTS AND IS TRYING TO LEGALISE MISUSE IN A PHASED MANNER.....** MOREOVER THERE IS NOT A WORD MENTIONED ABOUT THE CRITICAL ISSUE OF ENVIRONMENT WHICH FORMS THE VERY SOUL OF MC MEHTA'S PETITION.

CITIZENS NEED ASSURANCE & ANSWERS: We have little faith in DDA's ability to protect the City or Resident's Lives. In the previous haphazardly organised Public Hearing, DDA had invited all Stake Holders having divergent Objections and Interests together, thus creating acrimonious environment, not conducive to a fair hearing.

Many participants had to face threats of physical violence, therefore we request the following:-

1. DDA should invite RWAs, Traders, Village Stakeholders etc on SEPARATE DAYS. RWAs do not wish to appear in 'Open to All' Public Hearing.
2. DDA has asked for complete details of petitioners..... Privacy of individuals must be ensured..... Last time they had placed complete details with home address/mobile/email on website leading to THREATS and TROLLING.
3. DDA must place EIA Report, Area Density, Availability of Resources and Infrastructure necessary for Healthy Living as per laid out norms & in Sec-11A(1) of DDA Act, 1957. What was the fate of Suggestions placed by RWAs in February ??? Which of them were agreed upon ??? DDA must prepare and place in Public Domain, AREA WISE IMPACT STUDY to educate the residents so that they can make an informed intervention/choice. Most of the residents don't understand the

consequences of these amendments. The advertisement is also placed in a manner that it has not got the desired attention of public, it is like a regular tender notice of DDA.

4. Has DDA, MCDs or Urban Development Ministry conducted any audit or field survey to ascertain whether the conditions under which relaxations in MPD-2021 were granted have been implemented since 2006 ???
5. What has been the fate of the SQUAD / dedicated department formed to oversee strict implementation of MPD-2021 and be accountable to the Supreme Court as mentioned in 'The Judgment' ???
6. Is DDA, MCDs or Urban Development Ministry satisfied with the implementation of MPD-2021; provision of infrastructure and the impact on quality of life ???
7. What Scientific Methodology has been used for calculation of Conversion Charges for provision of additional Infrastructure necessitated due to extra FAR, so that the burden of the cost of such infrastructure does not fall on 1.50 Crore Citizens of Delhi by way of additional Taxes.
8. Provide details with Video Proof of Surveys conducted by MCD for conversion of streets to Commercial/Mixed Land Use.
9. Transparent disclosure about the use of Conversion Charges collected since 2006 and kept in ESCROW ACCOUNT to be used for Infrastructure Development of specific areas.
10. Documentary proof that concerned Authorities have Strictly enforced Rules and not turned a Blind Eye to transgressions like Fire Safety & Pollution Norms; installation of ETP's; Building Bye Laws etc.
11. Documentary proof that Infrastructure development/augmentation has been carried out in the past decade due to increased FAR /Misuse.
12. DPR on the impact of TOD Transit Oriented Development along Metro Line and Government Residential Colonies being converted into Commercial Zones.
13. Punitive Action should be taken against officials (Including Seniors) under whose watch the illegalities happened. Matter should be investigated on Basis of Ground Reality and not File Noting, as on paper all action is always recorded with Notices and Photographs.

FLAWS IN MPD-2021 & PROPOSED AMENDMENTS THAT NEED TO BE ADDRESSED

- A. MISUSER PAYS POLICY NOT THE TAYPAYER:** Calculation of Conversion Charges should be done Scientifically on the basis of Actual Cost for provision of additional Infrastructure necessitated due to extra FAR, so that the burden of the cost of such infrastructure does not fall on 1.50 Crore Citizens of Delhi by way of additional Taxes.
- B. NO INCENTIVE TO MOVE TO COMMERCIAL AREAS:** People prefer to open Commercial establishments on Notified Streets of Residential Areas as presently the cost of such Acquisition is 75% lower compared to LSC/CC. The Conversion Charges, Registration Fee and Cost of Land are much lower, even Provision of Parking Space is the responsibility of the Authorities, then where is the incentive to operate from a Commercial Area. NOTIFIED COMMERCIAL ZONES ARE LANGUISHING AND DESERTED DUE TO THIS OVERSIGHT IN THE MASTER PLAN. Till commercial activity in Residential Area is phased out as per SC Judgment of 16-02-2006, annual MISUSE CHARGE amounting to 10 times being charged to LSC/CC must be imposed on such misuse.

C. BASEMENTS AND ITS USE: Part-1: Misuse of Basements is rampant because Bye-law is ambiguous, clear guidelines for use of basement must be made. If free of FAR then only for non-dwelling domestic use or storage purpose; if put to Professional Use then conditions be imposed that the use shall adhere to Density & Civic Infrastructure Load Norms, other parameters prescribed in ZONAL USE FACTOR and as per Sanctioned Plan ie Residential, Commercial or Industrial.

Part-2: Basements should be allowed for full width of Plot NDMC and Cantonment Area, there is no such restriction. Basements should be allowed after proper guidelines are framed for modern foolproof technique of digging in areas where soil conditions and neighbouring house designs are stable ambiguity leaves enormous scope for corruption. No washrooms be allowed, however partitions for subdivision among multiple partner/owners be possible.

D. DIFFERENTIATE BETWEEN A PROFESSIONAL AND FIRM: Professional Firms/Nursing Homes of LAWYERS/CA's/ARCHITECTS/DOCTORS etc in the guise of SELF EMPLOYED PROFESSIONALS are the new threat to RESIDENTIAL PEACE. The law was envisaged to allow Professionals to conduct vocation FROM THEIR RESIDENCE occupying no more than 30% space. Repeated amendments have Large led to LAW FIRMS operating out of Entire Rented Residential Buildings including Basements with Multiple Dozen Employees and manifold Visitors working Late into the night. BASEMENTS are being bought by outsiders not residing in the building for so called professional use contrary to the spirit of 'The Judgment'. There is no control over Timings or Parking Availability resulting in Neighbourhood Fights. ONLY PROFESSIONALS IN SELF OCCUPIED & ACQUIRED PROPERTY should be allowed as was the case in MPD-2001. There should be restriction of Closing Time as in the case of RULES OF ALLOTMENT OF CHAMBERS IN HC/SC from 9:00 AM to 7:00 PM and no more than 4-5 total employees/staff.

E. GUESTHOUSES & SURROGATE BUSINESS TO HOODWINK MPD: Mushrooming of Guest Houses flouting norms are indulging in multiple activities. Those Registered under BED & BREAKFAST Scheme are running Guest House; those Registered under Guest House are offering BANQUET/CONFERENCE/SPA Facilities, lay man has no way of Verifying Authenticity of Documents. There should be a Ceiling on the number of Guest Houses that can operate in a Colony as per Area Density. Being Operational 24X7 they disturb PEACE, TRANQUILITY & SECURITY of Residential Colonies. Misuse by Surrogate Business Activity in Shops allowed in Exempt List is rampant, Ice Cream Parlors masquerading as Dairy; Boutiques as Tailors; Fancy Paper/Gift Shops as Stationary Shops etc. Apart from that they are also flouting Owning and Living in the said Premises and Front Access Norms also as enshrined in 'The Judgment'.

F. TUITION CENTERS/GYMs/PATHLABS/BANKs/NURSING HOMES etc: Mushrooming of such commercial establishments put additional burden on infrastructure. High footfall and increased traffic disturbs neighbourhood Tranquility. 'The Judgment' clearly says *In respect of planning, reference can usefully be made to Section 313 of the DMC Act as well. The said section provides for the requirement of layout plan of the land. It, inter alia, provides that before utilizing, selling or otherwise dealing with any land under Section 312, the owner thereof shall send to the Commissioner a written application with a layout plan of the land showing various particulars including the purpose for which the building will be used. For breach of Section 313, action can be taken under Section 314. It has rightly not been disputed by any counsel that neither layout plan, nor the building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the Master Plan. If in the master plan, the land use is residential, MCD cannot sanction the plan for any purpose other than residential.* ACTION SHOULD BE TAKEN AS PER LAW.

G. PUBS, FAMILY RESTAURANTS & COLONY CLUBS NOT THE SAME: Do not paint all with the same broad brush, DDA must draft the Laws with care, previously Pubs and Clubs were deemed to be shut. While Pubs have been disturbing Neighbourhood Tranquility, Colony Clubs work under a disciplined hierarchy and serve a recreational purpose. Pubs should be confined to commercial

centers and Malls. Family Restaurants with liquor licenses with strict closure timing should only be in LSCs/CC and nowhere else. Needless to say all these must enforce Environment Norms.

- H. SHAM SURVEYS NOT COMING WITH CLEAN HANDS:** September 2007 was made the Cut-Off Date WE DEMAND SCIENTIFIC/FORENSIC METHODOLOGY TO DETERMINE WHAT PERCENTAGE OF PLOTS ON STREETS (2183 + 345) DECLARED COMMERCIAL/MIXLAND USE WERE BEING MISUSED IN 2006 by way of Latest GPS Tagging and using Cartosat-2, Google Map, Geospatial Delhi Limited (GSDL) facilities, Sales Tax/VAT Registrations, Trade License, Power Bills, Registration under shops and establishment Act, ESIPF, Registration with other Govt. Departments etc. **As per Sec-11A(1) DDA is prohibited to change land use.**
- I. SECURITY CORDON OFF RESIDENTIAL FROM COMMERCIAL:** Ensure Entry to LSC's/Commercial/Mixed Use Streets does not disturb Residential Peace and the Area is suitably cordoned off to curb cross traffic. Install Gates at entry/exit points to Block all commercial traffic into Residential Area, including Loading / Unloading of Merchandise and Visitors to Commercial Establishments etc. Strictly adhere to Closing and Opening Timings of Commercial Areas as they are in conflict with Residential Tranquility. Commercial Activity strictly within Master Plan norms and should not spread to rooftops. DDA in its Affidavit to the SC had addressed this issue.
- J. SCHOOLS IN RESIDENTIAL COLONIES SHOULD BE KEPT IN CHECK ON EXPANSION:** Like a freeze on the number of dwelling units in Residential Plots, Schools too should not be allowed to expand the number of sections per class. The expansion should be based on the population density of the area as also on the Civic Infrastructure, like Roads, Parking, Water, Sewage etc. available in the colony. Unbridled expansion puts immense pressure on the neighbourhood and brings the colony to a halt. Bye laws of school buildings should be made available to RWAs so that unbridled expansion can be checked. Schools should be asked to inform RWAs before expanding further. All parking of vehicles like buses, cabs, staff cars, student vehicles must be made to park within the school premises there should be no traffic jams due to haphazard parking and offloading.
- K. COMMUNITY CENTRE/CLUB/PLAYGROUND FOR COLONY:** The planners for all colonies must provide a Recreation Area with indoor facilities to hold functions such as marriages and other social functions. Earlier these functions were held in colony parks and later Supreme Court banned commercial use of Parks while SC meant Commercial use, the over Zealous MCD Babus notified that most parks be converted to ornamental parks. This deprived the children of Playgrounds and the Residents of a space for holding small functions. MCD is in contempt of SC as they failed to follow part two the same order stating that Community Centers must be made so that residents do not have to go far for social functions. Supreme Court order must be implemented and Community Centre built, of large enough capacity and of a quality that befits the status of the colony with rooms for overnight stays as also space for RWAs office. There should be sufficient Parking and large open lawns for outdoor functions the facility should be large enough to hold at least two functions to cater to the busy Indian Marriage calendar.
- L. PARKING SURRENDER SETBACK - NO EXCLUSVE USE:** Identifying, Procurement and Funding for Land and Construction of Parking Lot should be the responsibility of MISUSERS in consultation with respective Municipalities. No Public Land which was earlier earmarked for a Public Utility be converted into a Parking Lot. Misusers may buy land at Market Rates for Parking Lots and such plots land-use maybe changed accordingly.
- M. GUARD ROOM AND WASHROOM IN STILT:** The recent distraction technique used by MCD to save their patrons was to target Residential Stilts which were partially covered to make Servant Rooms. Irrespective of whether such rooms were being used for commercial purposes or purely domestic, they were sealed. It is requested that provision for Guard Room and Washroom may please be allowed. **FOR SERVANT ROOM THE EARLIER (MPD 1981) PROVISION FOR MEZZANINE ROOM IN THE STAIRWELL BE ALLOWED FREE OF FAR FOR EACH FLOOR.**

N. ACTION AGAINST OFFICIALS FOR TURNING A BLIND EYE: Residents and Traders are of one voice in this regard, had the Officials performed their duty diligently, Delhi would not have been in the mess it finds itself in. STF formed comprises of the same set of officials who were earlier entrusted to stop misuse. In 2001 also SC was assured of a Flying Squad as mentioned in 'The Judgment' but it all remained on paper. Zonal Monitoring Committees should be formed under supervision of SC appointed Monitoring Committee.

O. MASTER PLAN'S SANCTITY FREQUENT CHANGES HARMFUL: Development Norms in the Master Plan once finalized after careful analysis and study of the Impact on Quality of Life and Environment should be sacrosanct and not be tinkered with, at least for the duration for which it has been framed. Thereafter also Master Plan must ensure that areas that have been declared Residential must remain so, to provide a Secure, Peaceful and Healthy Habitat for citizens as enshrined in 'The Judgment'.

P. REDEVELOPMENT - WHAT IN DDA'S DICTIONARY DOES REDEVELOPMENT MEAN: In the past decade no redevelopment has been noticed, all we see is individual plots supporting taller buildings with scant regard for FAR & Parking Norms; Bye-Laws; Structural or Fire Safety Conditions as per Law. The size of Area Under Redevelopment has been constantly reduced from 10,000 sqm to 5000 to 1000 and FAR increased, throwing all Environment, Health and Density norms to the wind.

Godown clusters should be in peripheral zones of the city so that Heavy Trucks do not criss-cross chocking the city and cause Environment Pollution. Loading / unloading should be inside the premises and proper Fire Safety precautions must be enforced.

There Should be a Single Window Clearance, all documents to be deposited in one place and file after approval be picked up, so that the OFFICER INCHARGE CLEARING/HANDING OVER THE FILE ENSURES THAT ALL CLEARANCES ARE IN PLACE **TO FIX ACCOUNTABILITY.**

PART-2 – AREA SPECIFIC - GK1

HANSRAJ GUPTA MARG IS NOT A MASTER PLAN ROAD and is as such an inner Colony Road of 90 Feet width. After great difficulty area RWAs managed to keep it out of Mixuse/Commercial Notification in 2006. The concerted efforts of RWAs have been systematically frustrated by repeated amendments (148 and counting) to the Master Plan and Surrogate Business Activities. Over 35 Guesthouses have mushroomed and numerous establishments have been allowed to open.

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- 3. DIFFERENTIATE BETWEEN A PROFESSIONAL AND FIRM:** Professional Firms of LAWYERS/CA's/ARCHITECTS/DOCTORS etc in the guise of SELF EMPLOYED PROFESSIONALS are the

new threat to RESIDENTIAL PEACE. The law was envisaged to allow Professionals to conduct vocation FROM THEIR RESIDENCE occupying no more than 30% space. Repeated amendments have Large led to LAW FIRMS operating out of Entire Rented Residential Buildings including Basements with Multiple Dozen Employees and manifold Visitors working Late into the night. BASEMENTS are being bought by outsiders not residing in the building for so called professional use contrary to the spirit of 'The Judgment'. There is no control over Timings or Parking Availability resulting in Neighbourhood Fights. ONLY PROFESSIONALS IN SELF OCCUPIED & ACQUIRED PROPERTY should be allowed as was the case in MPD-2001. There should be restriction of Closing Time as in the case of RULES OF ALLOTMENT OF CHAMBERS IN HC/SC from 9:00 AM to 7:00 PM and no more than 4-5 total employees/staff.

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- 5. PREP SCHOOL/GYMS/PATHLABS/BANKS/ etc:** Mushrooming of such commercial establishments put additional burden on infrastructure. High footfall and increased traffic disturbs neighbourhood Tranquility. 'The Judgment' clearly says *In respect of planning, reference can usefully be made to Section 313 of the DMC Act as well. The said section provides for the requirement of layout plan of the land. It, inter alia, provides that before utilizing, selling or otherwise dealing with any land under Section 312, the owner thereof shall send to the Commissioner a written application with a layout plan of the land showing various particulars including the purpose for which the building will be used. For breach of Section 313, action can be taken under Section 314. It has rightly not been disputed by any counsel that neither layout plan, nor the building plan, can be sanctioned by MCD except in the manner and for the purpose provided in the Master Plan. If in the master plan, the land use is residential, MCD cannot sanction the plan for any purpose other than residential.*
- 6. NURSING HOMES IN RESIDENTIAL COLONIES:** Strict enforcement of Norms for Nursing Homes in Residential Colonies In A & B Category colonies 30 feet roads were clearly stated not suitable for Nursing Homes and got a relief from this menace in the MPD but it is not strictly enforced. Approval of RWAs to be made mandatory and strictly ban all Nursing Homes on narrow 30 feet roads. Zonal Norms should freeze the maximum number of such facilities that can be allowed to operate from a colony according to the population density, that too only on 100 feet roads. Compounding hardship penalties on yearly basis should be imposed on defaulters. Those Nursing Homes that fall in the conforming parameters should have waiting areas @ two persons per bed and parking space @ one ECS per bed within the premises.

PART-3 – REBUTTAL TO DDA PROPOSAL

Reference: Your Public Notice No F.3(10) 2014/MP Published in the News Papers

1. Please refer to your public notice cited above about the proposed changes in the Master Plan 2021 that are summed up as under: -

A. Para 5.6 Community Centre (CC) Local Shopping Centre (LSC)/ Convenience Shopping Centre (CSC)

- 5.6.2 The existing built – up commercial centers may be redeveloped if need be with enhanced FAR subject to payment of appropriate levies. **To incentivize the redevelopment the maximum FAR equivalent to residential plotted development given under Para 4.4.3 shall be applicable on the entire plot of LSC/CSC as a comprehensive scheme. Parking to be provided as per MPD-2021 norms.**
- 5.6.3 Shop- cum-residence complexes (Shop-cum-residence plots. Shop plots) later designated as CC/LSC/CSC **(as per the list to be notified by GNCTD based on the survey report to be submitted by the concerned local body) shall be allowed to continue with the activities permissible in the Local Shopping Centre with the following conditions**
- 5.6.4 Other existing shop- cum- residence plots shall also be allowed to continue with original permitted use with the FAR of residential plotted development. The upper floors can be converted to commercial use after paying the applicable charges.
- 5.6.5: The basement shall be permitted in shop-cum-residence plots/ complexes later designated as CC/LSC/CSC subject to relevant provisions under mixed use regulations. If such use of basement leads to exceeding the permissible FAR on the plot, such excess FAR shall be subject to payment of appropriate charges prescribed with the approval of Government.
- 5.6.6: In all the above cases, **owner shall obtain the approval of revised building plans for any addition/ alteration/ new construction/ conversion from the concerned local body subject to all statutory clearances w.r.t relevant provisions of building bye laws, structural safety, fire safety etc.**
- 5.6.7: Parking provisions shall be as per prevailing norms for residential plotted development and as stipulated in para 5.6.9. **One-time parking charges shall be paid either as down payment or in maximum four installments subject to payment of appropriate charges as prescribed with the approval of Government.**
- 5.6.8: In order to meet the parking requirements, **concerned local bodies along with concerned traders/ establishments/ RWAs shall identify and develop the land for providing shared/ common parking. 5% additional Ground Coverage shall be permissible within the scheme area for the provision of public parking.**
- 5.6.9: **In order to promote parking, the owner of the plot will be allowed to amalgamate the plots up to minimum plot size of 1000 sq.m to provide additional parking on the amalgamated plot.** Such plots shall be entitled for a rebate of 50% in conversion charges.
- 5.6.10: In case there is no parking facility available in the vicinity, concerned local body may declare such areas as pedestrian shopping streets/ areas. Public transport authority shall ensure last mile connectivity to these areas.

2. Now once we refer to the proposed amendments the crux is as follows: -

- (i) To incentivize the redevelopment the maximum FAR equivalent to residential plotted development given under Para 4.4.3 shall be applicable on the entire plot of LSC/CSC as a comprehensive scheme;
 - (ii) as per the list to be notified by GNCTD based on the survey report to be submitted by the concerned local body.
3. Thus, while issuing public notice, in terms of (ii) above it emerges that no survey has been conducted either by the Local Authorities or by the GNCT of Delhi that are to be later designated as CC/LSC/CSC has been carried out. Thus, it is evident that the entire exercise seems to have been planned without considering the provisions contained in section (s) 7, 11A(1) of the DDA Act, 1957 (hereinafter referred to the Act) read with Rule 3 of the Delhi Development (Master Plan and Zonal Development Plan) Rules, 1959, relevant text of which is reproduced as under :-

(i) Sec. 7 Civic survey of, and master plan for, Delhi

- (1) The Authority shall, **as soon as may be, carry out a civic survey of,** and prepare a master plan for, Delhi;
- (2) The master plan shall-
 - (a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and
 - (b) serve as a basic pattern of frame-work within, which the zonal development plans of the various zones may be prepared
- (3) The master plan may provide for any other matter which is necessary for the **proper development of Delhi**

(ii) 11A. Modifications to plan

- (1) The Authority may make any modifications to the master plan or the zonal development plan as it thinks fit, being modifications which, in its opinion, do not affect important alterations in the character of the plan and which do not relate to the extent of land-users or the standards of population density.

(iii) Rule 3 of DDA (Master Plan & Zonal Development) Rules 1959

3. Civic Survey. – The civic survey to be carried out by the Authority may include survey and analysis of the physical, economic and sociological features of Delhi, with reference to natural resources distribution of a population, industry, communications, housing requirements and such other matters as in the opinion of the Authority, relate to the development of Delhi.

4. Therefore, o perusal of the aforesaid provisions the following position emerges: -

- (a) **Section 7** provides for carrying out survey by DDA before preparing Master Plan;
 - (b) **Section 11(A) (1)** permits change of land use only in cases where such change does not affect: -
 - (a) important alterations in the character of the plan; and
 - (b) which do not relate to the extent of land-users;
 - (c) or the standards of population density
 - (c) **Rule 3** – is implementation mechanism for section 7 of the Act.
5. Therefore, in the aforesaid background, the proposals of amending the Master Plan fail on the first ground as no survey has been conducted: -
- (a) by DDA as provided under section 7 rather it has been delegated to the State Government or local agencies beyond its competence;
 - (b) Even otherwise it is a matter of record that since 1984 onwards entire construction in Delhi has been carried out without assurance of water supply from Delhi Jal Board as it had refused to supply the potable drinking water to the colonies developed by it.
 - (c) Since the residential areas planned earlier have been allowed to be misused and illegally converted into commercial areas, any proposal to regularise would mean legalising the illegality;
 - (d) Since the proposed changes would amount to revising the population density, DDA is barred by the mandate of section 11(A)(1) of the Act;
 - (e) It is also matter of record that the drainage system of the Capital City of Delhi collapsed way back in 2006. Till date the so-called Master Drainage Plan is yet to take shape even on Drawing Boards of the DDA.
 - (f) Till date the DDA, despite possession of Map prepared by Geological Survey of India refuses to demarcate 7777 hectares of Ridge for reasons best known to it and it keeps changing the location of Ridge at its own whims & fancies, which is a serious offense.
 - (g) A perusal of compendium of Notifications issued by DDA from 2007 to 2014 indicates that substantial changes have been made in the Master Plan unilaterally without complying with the mandate of section 11A, consequently the capital city has lost substantial Green Areas as detailed herein below:-

<u>Change of land use by area:</u>	<u>Total Area (in acres):</u>
Green to Govt	815.73
District Park – Semi Public, helipad, Transport Nagar	11,065.30

Water Body & Agriculture to Govt, construction of Buildings	932.30
Residential to Office	10,866.10

6. Thus, as it is the capital city has lost water bodies admeasuring in an area of 932 acres that has killed the potential water harvesting/recharge areas contrary to the various judicial pronouncements by Apex Court. Even the Ridge has been rechristened as 'District Parks' consequently he capital city has already lost 11065 acres of mandatory Green for parking of trucks, Govt purposes for construction of Buildings helipad and other purposes. Equally worrying the fact of conversion of 10,866 acres of land from Residential to office.
7. The impact of the aforesaid changes without assessing the carrying capacity of the City can be seen in terms of depletion of green cover leading to loss of water recharge area consequently depleting the water table, climate change, dust storms.
8. The proposed changes also exclude major redevelopment projects being carried out by NBCC and CPWD in the middle of ecologically sensitive area of Southern and Central Ridge without assessing the existing population density, population density after redevelopment of those areas. Even the Environmental Clearance has been granted by the DPCC without any assurance of water supply, without studying the drainage system that has already collapsed and also without studying the existing traffic congestion on the surrounding roads and future traffic in terms of PCU.
9. Therefore, in this background, the proposed amendments in the master plan need to be dropped outright as the said proposals are contrary to the Act and would add to the chaos on the city Roads and would have serious impact on Environment of not only Capital City but entire NCR as the ground water table has already reached alarming level due to over exploitation.
10. **Even otherwise most of the Shopping Complexes and District constructed by DDA are lying vacant in absence of buyers. The main reason is that there is no incentive for shop keepers to go to these District Centres and Commercial Centres because of extremely high price and lack of maintenance around them Whereas any one can open shop in residential area at one tenth of cost without any reoccurring costs. Therefore, even if the shops in residential areas are closed and the selling rates of shops are rationalised and lowered down instead of charging conversion charges, the shop owners in residential areas can shift to the District Centres and commercial Centres.** This would help the authorities in clearing the mess created in the residential areas.
11. Thus, in the aforesaid background the proposed changes would multiply congestion on City Roads leading to massive air and noise pollution impacting the right of life and liberty under Article 21 of the Constitution of India and also in contravention of the mandate of Article 48A and Article 51(A)(g) which is binding on DDA.
12. Further, it is a matter of record that despite taking so called steps to convert the Capital City of Delhi into a world class city, has converted the City into most polluted city in the world. Therefore, any effort to permit the proposed changes without conducting the survey as provided under section 7 read with Rule 3 and keeping in mind the fact that entire infrastructure of the Capital City has been designed and developed with a population density

of 40 to 50 families per hectare would further kill the capital city and reduce the same to a gas chamber and make it a unlivable place.

13. The Apex Court has time and again reiterated the fact that the Master Plan is the Force of law and mix use cannot be permitted by the authorities as held in the case of **R.K. Mittal v. State of U.P., (2012) 2 SCC 232 in Paras 59 & 60**, relevant text of which are reproduced as under:-

59. All the cases where banks, nursing homes or any commercial activity is being carried on, particularly like the appellants' case, where a bank and company are running their offices in the residential sectors would amount to change of user and thus be impermissible. The officers of the Development Authority should refrain from carving out exceptions to the implementation of the Master Plan and the Regulations in force, that too without the authority of law. For taking up any exercise for change of user or such similar conditions, amendment to the relevant Regulations, Master Plan and if needed, the provisions of the Act, is a condition precedent. It should be ensured that such exercise would further the cause and object of the Act and would not be destructive to the scheme of the development. We have no hesitation in our minds in holding that no such jurisdiction or authority vests in the officers of the Development Authority to permit change of user in its discretion and in violation of the law in force.

60. Another important aspect is that the Development Authority had taken a policy decision and had earmarked specific areas where land was made available to the banks to carry on their commercial activities in the commercial pockets of the industrial or institutional sectors. This land was being provided at a concessional rate and a number of banks had taken advantage of this scheme to get the lands allotted to them in the appropriate sectors. They have been given lands in the commercial and even in the commercial pockets of the industrial or institutional sector. However, the 21 banks functioning in the residential sectors have not even opted to apply under the said scheme. If they would apply, the Development Authority has taken onto itself to consider the same sympathetically. This Scheme was opened on 20-6-2011 and closed on 11-7-2011. 26 commercial plots were offered for allotment under this Scheme in different sectors and plots were even reserved to be used as banks. In other words, the Development Authority has provided due opportunity to these banks to shift their activities to the appropriate sectors, however, to no effect. Despite issuance of show-cause notices and offer to allot alternative plots, the unauthorised use by the appellant banks and nursing homes have persisted in the residential sectors.

68. The Master Plan and the zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The plans have a binding effect in law. If the scheme/master plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities;

69. This Court in K. Ramadas Shenoy v. Town Municipal Council, Udipi [(1976) 1 SCC 24 : 1975 SCC (Cri) 746] was concerned with the resolution of the Municipal Committee to construct a cinema theatre at place where earlier the

permission was granted for construction of Kalyan Mandap-cum-Lecture Hall and the contention before the Court was that town planning scheme forbade any cinema building at the place asked for and therefore, the resolution of the Committee was invalid. This Court accepted the contention and while setting aside the resolution observed that an illegal construction of a cinema building materially affected the right to enjoyment of the property of the persons residing in the residential area and there being unauthorised construction, the Court would intervene and quash the resolution of the Municipality. This view was followed in M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464] wherein this Court even directed demolition of unauthorised construction

70. At this stage, we may also refer to the judgment of this Court in Virender Gaur v. State of Haryana [(1995) 2 SCC 577] , wherein this Court was concerned with the issue whether Dharmshala should be permitted to be constructed upon the land which was reserved as open space under the plan. This Court, while noticing the impact on environment, right to hygienic environment and protection of the residents, observed as under: (SCC p. 583, para 11)

“11. It is seen that the open lands, vested in the municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli on the touchstone of prospective operation of our order.

71. An ancillary question that comes up for consideration is as to how much area can be permitted to be used by a doctor to run his clinic or by a lawyer or architect to run their offices in the residential sector. If other conditions are satisfied, then as the law stands today, according to the Development Authority, they can be permitted to use 30% of the floor area ratio (FAR) of the ground floor for their clinics/offices. Reference can also be made to the judgment of this Court in Delhi Pradesh Citizen Council v. Union of India [(2006) 6 SCC 305] wherein similar directions were issued. We are not only relying upon the precedents of this Court, but such an approach would also be permissible on face of the Regulations, terms and conditions of the lease deed executed by the parties and the Master Plan. It would, therefore, be suffice if 30% of the ground floor area is permitted to be used for office of an architect/lawyer and for clinic simpliciter by a doctor.

72. From the above dictum of this Court, it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the courts while deciding such an issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Thus, it cannot ignore its fundamental duty by doing acts impermissible in law. There is not even an iota of reason stated in the affidavits filed on behalf of the Development Authority as to why the public notice had been issued without amending the relevant provisions that too without following the procedure prescribed under the law.

73. The concept of public accountability and performance of public duties in accordance with law and for the larger public good are applicable to the statutory bodies as well as to the authorities functioning therein. We find no justification, whatsoever, for the respondents to act arbitrarily in treating equals who are similarly placed as unequals. There is also no justification for the Development Authority to issue a public notice in the fashion in which it has done. A few officers of the Development Authority cannot collectively act in violation of the law and frustrate the very object and purpose of the Master Plan in force, the Regulations and provisions of the Act.

14. Therefore, in view of the aforesaid judgment pronounced by Hon'ble Supreme Court squarely covers the present case put up by DDA. Hence DDA is precluded from changing the land use from Residential to Mixed Land Use a concept that was unknown till the gross abuse of Master Plan was kicked off with connivance of the corrupt. Hon'ble Supreme Court in the case of **M.C. Mehta v. Union of India, (2006) 3 SCC 399** had dealt with the alarming situation earlier also and had observed and issued the directions relevant text of which is reproduced as under: -

2. This Court has a constitutional duty to protect the fundamental rights of Indian citizens. What happens when violators and/or abettors of the violations are those, who have been entrusted by law with a duty to protect these rights? The task becomes difficult and also requires urgent intervention by court so that the rule of law is preserved and people may not lose faith in it, finding violations at the hands of supposed implementers. The problem is not of the absence of law, but of its implementation.

3. Considering such large-scale flagrant violations, this Court had to prioritise as to which violations may be taken up first and then issue appropriate directions. In this view, at first instance, directions were issued in respect of shifting of hazardous and noxious industries out of Delhi. Directions were also issued for shifting of heavy and large industries as also some extensive industries. For shifting polluting industries had to be given topmost priority. Later, directions were issued for shifting of other extensive industries considering the continued unauthorised use contrary to master plan and zonal plan, by those industries as well as some other industries continuing in residential/non-conforming areas.

4. On one hand repeated orders were made to seek implementation of the laws and, on the other hand, simultaneously, more and more violations were taking place. Detailed reference to earlier orders made from time to time, the shifting stand of the authorities, various laws being violated, requirements of

town planning and the constitutional obligations of the authorities, has been made by this Court in the judgment dated 7-5-2004 [M.C. Mehta v. Union of India, (2004) 6 SCC 588] while dealing with unauthorised industrial activity and issuing time-bound directions for compliance and appointing a Monitoring Committee with directions for filing of periodical progress reports (M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (2004) 6 SCC 588]). The order dated 19-8-2003 sets out various issues involved including the issue of misuse but, at that stage, the issue of unauthorised industries was given priority and the directions in respect of shifting of industries were issued. In a way, this judgment is in continuation of the judgment dated 7-5-2004 [M.C. Mehta v. Union of India, (2004) 6 SCC 588] with the difference that now we have taken up the issue of large-scale misuse of residential premises for commercial use.

5. With regard to commercial use of premises in residential areas, it has been more than three years i.e. 30-9-2002 when the order was made directing respondents to file reply. In fact, the question of misuse of residential premises for commercial purposes was taken up even earlier as is apparent from the orders dated 31-7-2001 and 20-2-2002. By order dated 31-7-2001 passed in News Item AQFMY v. Central Pollution Control Board [WP No. 725 of 1994 dated 31-7-2001] the Court directed that:

“MCD will also inform this Court in the affidavit to be filed as to why no requisite action has been taken for stopping the gross misuse of buildings in the residential areas for commercial purposes and in the construction of commercial buildings in residential areas where only residential usage is permitted.”

6. Again on 20-2-2002, the order dated 31-7-2001 [WP No. 725 of 1994 dated 31-7-2001] was reiterated in the following terms:

“MCD is also directed to file within four weeks from today an affidavit indicating as to what it intends to do for stopping the misuse of the buildings in the residential areas which are being used for commercial purposes as has been directed by this Court's order dated 31-7-2001 [WP No. 725 of 1994 dated 31-7-2001] . If no affidavit is filed, the explanation in respect thereof should be given to the Court by the Municipal Commissioner.”

7. The learned amicus curiae filed IA No. 1860 of 2004 referring to aforesaid orders dated 31-7-2001 [WP No. 725 of 1994 dated 31-7-2001] , 20-2-2002, 30-9-2002 and 19-8-2003 and bringing to the notice of this Court a press release dated 22-7-2004 issued by the Municipal Corporation of Delhi (“MCD” for short) declaring a scheme to facilitate registration of shops, establishments, commercial establishments, etc. in the non-conforming/residential areas by granting ad hoc licences in respect of premises existing till 31-3-2003. This shows the apathy of a municipal body, which is constituted, amongst others, to ensure compliance with the laws. In this application, learned amicus curiae sought stay of the press release and the scheme. By order dated 2-8-2004, the press release and the Ad hoc Trade Registration Scheme were stayed by this Court

9. Few residents of a residential colony by the name of Green Park Extension, making averments about large-scale unauthorised constructions and stating that various letters written to MCD complaining about the illegal and

unauthorised constructions and misuser and consequent violation of master plan, etc. resulted in no action, filed a writ petition in the Delhi High Court in about October 1994 alleging how misuse of residential premises for commercial purposes was taking place, citing specific instances and complaining about total inaction on the part of the authorities in stopping such misuse. According to them, the officers were, in fact, encouraging or conniving with persons who were indulging in such misuse. The officers failed to carry out their statutory duties in stopping such misuse. A writ of mandamus was sought against the authorities directing them not to allow illegal commercial user. The petitioners therein alleged that such misuser and acts of omission and commission by the authorities were resulting in the environment in the residential colony being totally polluted and civic amenities jeopardised.

10. MCD, in reply, filed in April 1995 i.e. more than 10 years ago, admitted the violations and said that show-cause notices had been issued under the Delhi Municipal Corporation Act, 1957 (for short "the DMC Act") and the Corporation was doing its best in the matter. The same was the stand of DDA. All officers being directed to file affidavits reporting as to what action had been taken, filed affidavits with reference to the properties of which instances had been given, inter alia, stating that owners had been booked and action was being taken. Similar affidavits were filed by both MCD and DDA. In March 2000, MCD filed a status report giving particulars of approximately 663 properties in Green Park Main and 407 properties in Green Park Extension stating that many properties were being used as commercial and others partly commercial. When this was the position in a small colony, one can well imagine the plight in manifold other residential colonies and of residents living in those colonies in the capital city of Delhi.

24. In respect of an area where the notified/specified land use is residential, sanction for erection of a commercial building cannot be accorded, as is apparent from sub-section (2) of Section 336.

26. This takes us to the provision of sealing as contained in Section 345-A of the DMC Act. That provision was inserted by Act 42 of 1984 with effect from 10-12-1985. One of the objects for the amendments, as stated in the Statement of Objects and Reasons, is to contain massive conversion of residential constructions into commercial complexes. The Statement of Objects and Reasons, inter alia, states that "in recent years, growth of unauthorised colonies, encroachment on public streets, unauthorised construction of public and private lands and conversion of residential constructions into commercial complexes have assumed alarming proportions".

33. Keeping future needs in view, experts prepare master plans. Perusal of the Delhi Master Plans, 1962 and 2001 shows what were plan projections. At the time of planning, the experts in the field of town planning take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, need of household industries, etc. Provision for household industries in residential areas does not mean converting residential houses into commercial shops. It only means permitting activities of household industry in a part of a residential property. It does not mean that residential properties can be used for commercial and trading

activities and sale and purchase of goods. Master plan contemplates shops in district centres, community centres, local shopping centres, etc. and not in residential areas. Be that as it may, for the present, we are not considering the cases of small shops opened in residential houses for catering to day-to-day basic needs, but are considering large-scale conversion, in flagrant violation of laws, of residential premises for commercial use.

35. In the impugned judgment, while dealing with the provisions of the layout plan, it was observed that the provisions for user “are only regulatory in nature”. While dealing with the user, the High Court observed that “the power, whereby and whereunder the basic human rights or the fundamental rights conferred upon a person is taken away, must be specifically conferred by a statute”. The provisions of user may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of paper. That is the ground reality in the capital of the country. None has any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorised. Further, the words “unless the context otherwise requires” in Section 331 of the DMC Act are of no consequence for determining the point in issue as the context herein does not provide otherwise for the present purposes. It does not provide that the power of sealing under Section 345-A cannot be exercised in case of misuser. In view of the clear language of Section 345-A, we are also unable to sustain the view of the High Court that action under Section 345-A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. The conclusion of the High Court that action under Section 345-A can be taken only when there exists an order of demolition under Section 343, or on passing of an order under sub-section (1) of Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345-A that action can be taken even before or after an order is made under those provisions.

53. Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief the orders made in the last so many years but it seems the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. **On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone,** without having any respect and regard for law and other citizens. We have noticed above the complaints of some of the residents in respect of such illegalities. For the last number of years even the High Court has been expressing similar anguish in the orders made in large number of cases. We may briefly notice some of those orders.

54. More than fifteen years ago, on 17-5-1990, a Division Bench of the Delhi High Court presided over by Justice B.N. Kirpal (as the former Chief Justice of India then was) in the case of Ahuja Property Developers (P) Ltd. v. MCD [(1990) 42 DLT 474] , dealt with a writ petition in respect of a building in Kailash colony, New Delhi and noticed the extent of illegalities and the massive construction made that could not be used for residential purposes since there was no kitchen or kitchen facilities. Dealing with the argument put forth on behalf of builder that there is no power to seal any building under Section 345-A, dismissing the writ petition, it was observed that the petitioner had admittedly violated the law and cannot now be permitted to cry wolf. The Court said that the petitioner had admittedly constructed a building not only at variance with the sanctioned plan but also at variance with the completion certificate and completion drawings.

56. On 18-5-1995, Justice R.C. Lahoti (as the former Chief Justice of India then was) in the case of ANZ Grindlays Bank v. Commr., MCD [(1995) 34 DRJ 492] **echoed similar words and referred to decision of this Court, observing that the word "environment" is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. There is constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.** Dealing with the municipal laws providing for power of demolition, it was observed that while interpreting municipal legislation framed in public interest, a strict constitutional approach must be adopted. A perusal of the master plan shows that the public purpose behind it is based on historic facts guided by expert opinion.

57. The injurious effects on the health and well-being of those living in the neighbourhood were also noticed. Further, notice was taken of the fact of the unscrupulous builders building properties in deviation of laws, master plan with the connivance or collusion of the authorities.

58. On 9-2-1996 dealing with various properties at Pusa road in the case of Anil Kumar Khurana v. MCD [(1996) 36 DRJ 558] writing separate opinion as a member of Division Bench of the Delhi High Court, one of us (Y.K. Sabharwal, C.J.) noticed that the unauthorised constructions and unauthorised user of residential building for commercial purposes in Delhi had gained alarming proportions and crossed all limits. It was said that these activities are against the interests of the society at large and need to be dealt with firmly and that the public interest demands that the court should not come to the aid of those who break the law with immunity and put up commercial complexes on the land meant admittedly for residential use. These complexes are put up and spaces purchased for petty commercial consideration without any regard to the hardship and inconvenience of other citizens. It was further said that in respect of blatant unauthorised constructions and misuser, it cannot be said that the Commissioner of MCD has a discretion to order demolition or not and vesting of discretion in the circumstances would itself be arbitrary and illegal.

59. In the concluding paragraph it was stated that:

"In the end, I regret to notice that despite warning and caution given by the Apex Court and also this Court, from time to time, that stern action will be

taken against unauthorised constructions and misuse, these activities have gone on unabated, without any let or hindrance and all the warnings have fallen on deaf ears without any effect on the unscrupulous builders and purchasers of these spaces. It is, therefore, necessary to once again send a message, loudly, clearly and firmly to all those who indulge in such illegal activities that courts will not come to the aid of persons who indulge in such blatant unauthorised constructions and misuser of the properties. It is also the duty of the courts to examine these matters carefully before granting injunction restraining demolition of such unauthorised constructions. Ordinarily the courts before issuing injunctions in such matters should insist upon filing of the sanctioned plans and details about the existing structures to prima facie find out whether the existing structures are in accordance with the sanctioned plan and building bye-laws, etc. or not. The courts may also consider appointment of independent person to verify correctness of representations made about existing structures as in many cases unauthorised constructions are raised after issue of injunctions and in cover and garb of orders of injunction. The alarming nature of such illegal activities can be controlled only by due cooperation from all citizens including the media and the press. It is the duty of all to expose these lawbreakers. I hope the media would bring to the notice of public in general that unauthorised constructions and misuser have been severely dealt with by this Court and henceforth also no leniency would be shown in such matters. A copy of this judgment shall be sent forthwith to Delhi Doordarshan and All India Radio. Everyone has to be told that such unauthorised activities are against public interest. These activities have to be stopped forthwith. If in spite of this warning any one indulges in such unauthorised construction or misuse or in purchase of these unauthorised constructions he would be doing it at his own risk and peril and would not be heard to say that he has made large investments. I hope that at least now this message would be taken with all seriousness.

In view of the above, in my opinion, all the petitions and appeals deserve dismissal with costs quantified at Rs 10,000 in each case. These costs would be utilised by MCD for creating a special cell which should be set up to curb unauthorised construction and misuser of the immovable properties so that at least a beginning is made now to promptly check these illegal activities. The officials and officers manning this cell will have to be informed that any dereliction of duty would be severely dealt with."

60. It seems that in view of the aforesaid judgment attaining finality, some formal or cosmetic demolition had taken place. What is the position of these properties now is evident from the affidavit dated 16-11-2005 filed by the Additional Commissioner, MCD placing on record the present status after conducting inspections in second week of November, 2005. A perusal of the status report in respect of properties referred in the aforesaid case shows large-scale violations in the shape of showrooms, commercial offices, shops, law institutes and gymnasiums. The report shows that even after a lapse of 10 years, commercial activity is in full swing. This also shows the urgent need to introduce stringent measures for fixing accountability.

61. Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementations of the orders are utterly lacking. If the laws are not enforced and the orders of the courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such

blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, prima facie, such large-scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser.

67. Mr Ashwini Kumar, learned Senior Advocate appearing for MCD, also contended that since there is a large-scale misuse of residential premises for commercial purposes, it is a physical impossibility to remove the misuser. The contention deserves outright rejection. We have already noted how the misuser has attained such enormity. Despite repeated orders and directions, MCD took no action. Such a contention is not open to MCD. It is not merely a case of only lack of will to take action, it appears to be a case of predominance of extraneous considerations.

68. Rule of law is the essence of democracy. It has to be preserved. Laws have to be enforced. In the case in hand, the implementation and enforcement of law to stop blatant misuse cannot be delayed further so as to await the so-called proposed survey by MCD.

The suggestions would only result in further postponement of action against illegalities. It may be noted that MCD has filed zonewise/wardwise abstract of violations in terms of commercialisation as in November 2005.

According to MCD, the major violation has been determined in respect of those roads where commercialisation of the buildings is more than 50%. According to it, the major violations in 12 zones are spread on 229 roads. Roads on which there are major violations are, thus, known. In respect of these, there is no need for any survey or individual notice.

Beginning must be made to stop misuser on main roads of width of 80 ft or more. The names of these roads can be published in newspapers and adequate publicity given, granting violators some time to bring the user of the property in conformity with the permissible user, namely, for residential use if the plans have been sanctioned for construction of a residential house. In case owner/user fails to do so, how, in which manner and from which date, MCD will commence sealing operation shall be placed on record in the form of an affidavit of its Commissioner to be filed within two weeks.

On consideration of this affidavit, we will issue further directions including constitution of a monitoring committee, if necessary. The issue of accountability of officers and also the exact manner of applicability of polluter pays principle to owners and officers would be further taken up after misuser is stopped at least on main roads.

Civil Appeal No. 608 of 2003 abovementioned relates to Ring Road, Lajpat Nagar II. The other cases relate to areas like Green Park Extension, Green

Park Main, Greater Kailash, New Friends Colony, Defence Colony, West Patel Nagar, etc. These areas are illustrative. The activities include big furnishing stores, galleries, sale of diamond and gold jewellery, sale of car parts, etc.

15. Since the Hon'ble Supreme Court in Para 67 had already dismissed the plea of the Civic authorities that in view of the large-scale violations, it is difficult to implement the law. Therefore, the present proposal to amend the Master Plan is nothing but another cover effort to overcome the both the aforesaid judgements by camouflaging the same under the garb of exercising power vested with DDA under section 11(A)(1) of the Act, without complying with the mandate of the same section. Hence the proposed amendments merit outright rejection.

PART-4 – STF AN EYEWASH – ZONAL MONITORING COMMITTEE

ACTION AGAINST OFFICIALS FOR TURNING A BLIND EYE: Residents and Traders are of one voice in this regard, had the Officials performed their duty diligently, Delhi would not have been in the mess it finds itself in. STF formed comprises of the same set of officials who were earlier entrusted to stop misuse. In 2001 also SC was assured of a Flying Squad as mentioned in 'The Judgment' but it all remained on paper. Zonal Monitoring Committees should be formed under supervision of SC appointed Monitoring Committee.

Housing and Urban Affairs ministry has constituted a 15-member special task force (STF) to ensure enforcement of building rules and Master Plan for Delhi-2021.

The objective of the STF includes identifying encroachments on government land in Delhi and to reclaim them, monitor action taken by the local bodies with respect to unauthorised construction and oversee compliance of fire safety measures and disaster management requirements, particularly, in schools, colleges and hospitals.

Nothing is new in STF creation by Housing and Urban Affairs ministry constituting a 15-member special task force (STF) to ensure enforcement of building rules and Master Plan for Delhi-2021.

The real motive logically derived from its creation seems to get Monitoring Committee out of their way. The Monitoring and implementation done by MC created by SC is doing its job honestly and religiously which can bring changes as expected is disturbing for those who do not want to abide by law.

By creating this STF which will do some good works to show good intentions, motive is only to see exit of MC of Supreme Court. Once MC gone same will start all over again and new laws will be created where SC will not be able to help Delhi.

Let MC only create and fill all these posts under them and what is wrong in that. Have you seen submissions of MC over years of not getting proper support from these very departments and now these very departments are being given power to indirectly nullify Supreme Courts efforts to bring sanity in Delhi. See the motive behind all this, clearly visible to nullify and exit monitors who are doing their job i.e. MC created by SC. If intentions are righteous, let MC of SC head this STF. In fact create Zonal Monitoring Committees to oversee the STF.

Further, the applicants seek opportunity of being heard in person at the time of public hearing.

On behalf of 'SAVE OUR CITY' Campaign

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